

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 387

Introduced by Combs, 32; Price, 26

Read first time January 12, 2005

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to nursing assistants; to amend sections
2 71-6603 and 71-6725, Reissue Revised Statutes of
3 Nebraska, and sections 71-448, 71-6038, and 71-6039,
4 Revised Statutes Supplement, 2004; to change provisions
5 relating to training and employment of nursing
6 assistants; to define terms; to require reports; to
7 provide a penalty; to harmonize provisions; and to repeal
8 the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 7 of this act:

2 (1) Department means the Department of Health and Human
3 Services Regulation and Licensure;

4 (2) Health care entity means a health care facility or a
5 health care service licensed under the Health Care Facility
6 Licensure Act;

7 (3) Nursing assistant means any person, other than a paid
8 dining assistant or a licensed registered or practical nurse,
9 employed by a health care entity for the purpose of providing
10 nursing-related services for patients;

11 (4) Nursing-related services means assistance with
12 activities of daily living, including dressing, bathing, toileting,
13 transferring, and feeding, and other personal, direct, hands-on
14 care as delegated by a licensed registered or practical nurse or
15 other licensed health care professional; and

16 (5) Patient means an individual receiving care from a
17 nursing assistant in a health care entity and includes, but is not
18 limited to, a resident or client.

19 Sec. 2. Section 71-6039, Revised Statutes Supplement,
20 2004, is amended to read:

21 ~~71-6039.~~ (1) No person shall act as a nursing assistant
22 ~~in a nursing home for a health care entity~~ unless such person:

23 (a) Is at least sixteen years of age; ~~and has not been~~
24 ~~convicted of a crime involving moral turpitude;~~

25 (b) Is able to speak and understand the English language
26 or a language understood by a substantial portion of the ~~nursing~~
27 ~~home residents~~ patients served by the nursing assistant; and

28 (c) ~~Has~~ Except as otherwise provided in subsection (3) of

1 this section, has successfully completed a basic course of training
2 approved by the department for nursing assistants ~~within one~~
3 ~~hundred twenty days of initial employment in the capacity of a~~
4 ~~nursing assistant at any nursing home if employment begins after~~
5 January 1, 1984 as prescribed in subsection (2) of this section and
6 a competency evaluation or has met other requirements related to
7 training as prescribed by the department;

8 (d) Completes one hour of training related to patient
9 abuse and neglect;

10 (e) Annually completes six hours of continuing education
11 related to providing services as a nursing assistant;

12 (f) Has not been found guilty of a crime involving moral
13 turpitude or abuse, neglect, or mistreatment of another;

14 (g) Has successfully completed basic life support
15 training;

16 (h) Except as provided in subsection (3) of this section,
17 has an active designation with the Nurse Aide Registry; and

18 (i) Has not had a finding entered on the Nurse Aide
19 Registry indicating abuse, neglect, or mistreatment of another or
20 misappropriation of property.

21 (2) The department may prescribe a curriculum for
22 training nursing assistants and may adopt and promulgate rules and
23 regulations for such courses of training. The content of the
24 courses of training and competency evaluation programs shall be
25 consistent with federal requirements ~~unless exempted for long-term~~
26 care facilities. The department may approve courses of training if
27 such courses of training meet the requirements of this section.
28 Such courses of training shall be no less than seventy-five hours

1 in duration and shall include instruction on the responsibility of
2 each nursing assistant to report suspected abuse or neglect
3 pursuant to sections 28-372 and 28-711. ~~Nursing homes~~ Health care
4 entities may carry out approved courses of training, ~~within the~~
5 ~~nursing home,~~ except that ~~nursing homes~~ health care entities may
6 not conduct the competency evaluation part of the program. The
7 prescribed training shall be administered by a licensed registered
8 nurse.

9 (3) For nursing assistants employed as such on the
10 effective date of this act who have not completed the
11 seventy-five-hour course of training and the training related to
12 patient abuse and neglect or do not have an active designation with
13 the Nurse Aide Registry, such individuals may continue their
14 employment as a nursing assistant until January 1, 2006, by which
15 time they shall successfully complete a competency evaluation
16 program consisting of both a written or oral component and a manual
17 component and the training related to patient abuse and neglect.
18 Each health care entity employing such an individual shall make the
19 necessary provisions to allow such individuals up to three
20 opportunities to participate in and complete the competency
21 evaluation program and the training related to patient abuse and
22 neglect. An individual who successfully completes the program and
23 the training related to patient abuse and neglect shall be placed
24 on the Nurse Aide Registry and shall have the requirement of
25 subdivision (1)(c) of this section waived. An individual who fails
26 to complete the program and the training related to patient abuse
27 and neglect by January 1, 2006, shall be required to comply with
28 subsection (1) of this section prior to being employed as a nursing

1 assistant on or after January 1, 2006. at intermediate care
2 facilities for the mentally retarded, such courses of training
3 shall be no less than twenty hours in duration and shall include at
4 least fifteen hours of basic personal care training and five hours
5 of basic therapeutic and emergency procedure training, and for
6 nursing assistants at all nursing homes other than intermediate
7 care facilities for the mentally retarded, such courses shall be no
8 less than seventy-five hours in duration.

9 (4) This section shall not prohibit any facility health
10 care entity from exceeding the minimum hourly or training
11 requirements.

12 Sec. 3. A nursing assistant may perform the following
13 activities at the direction and under the supervision of a licensed
14 registered or practical nurse or other licensed health care
15 professional:

16 (1) Collecting, reporting, and recording of basic
17 objective and subjective data;

18 (2) Observing and reporting of changes in the condition
19 of a patient;

20 (3) Functions taught in approved courses of training for
21 nursing assistants;

22 (4) Basic duties assigned by the supervising health care
23 professional;

24 (5) Providing total personal care or assistance with
25 activities of daily living;

26 (6) Providing comfort measures and basic emotional
27 support to patients;

28 (7) Assisting with basic maintenance and restorative

1 nursing according to the level of training of the nursing
2 assistant;

3 (8) Maintaining a safe and healthy environment;

4 (9) Repeating care instructions as given by the
5 supervising health care professional related to activities of daily
6 living;

7 (10) Seeking guidance and direction from a licensed
8 health care professional when appropriate;

9 (11) Performing basic life support when necessary; and

10 (12) Using principles of asepsis and infection control.

11 Sec. 4. A health care entity shall not employ a nursing
12 assistant until the entity has (1) checked the Nurse Aide Registry
13 to ensure the applicant for employment is listed as having active
14 status, (2) checked with the sex offender registration and
15 community notification division of the Nebraska State Patrol to see
16 if the applicant is registered under the Sex Offender Registration
17 Act, and (3) received a national criminal history record
18 information check regarding the applicant which includes
19 information concerning the applicant from federal repositories of
20 such information and repositories of such information in other
21 states if authorized by federal law.

22 Sec. 5. A health care entity shall report to the Nurse
23 Aide Registry any information it has with regard to allegations
24 regarding a nursing assistant involving abuse or neglect of a
25 patient or misappropriation of property, incompetence, mental,
26 physical, or chemical impairment, and drug use. A health care
27 entity shall adhere to the requirements of the abuse protocol for
28 long-term care as identified by the department.

1 Sec. 6. A nursing assistant shall report to the Nurse
2 Aide Registry when he or she (1) has been charged with a crime
3 involving abuse or neglect of a patient or misappropriation of
4 property, (2) is suffering from a mental, physical, or chemical
5 impairment, (3) has been discharged from employment due to alleged
6 incompetence, negligence, unethical or unprofessional conduct, or
7 physical, mental, or chemical impairment, or (4) has been convicted
8 of violating section 60-6,196 or 60-6,197.

9 Sec. 7. Reports under section 5 or 6 of this act shall
10 be made within five working days of the occurrence being reported
11 and shall be made to the Nurse Aide Registry in such manner and
12 form as the department may require by rule and regulation. Such
13 reports shall be confidential, shall not be public records, shall
14 not be subject to subpoena or discovery, and shall be inadmissible
15 in evidence in any legal proceeding of any kind or character. No
16 person having access to such reports shall disclose such
17 information in violation of this section, except that the
18 department may exchange such information with law enforcement and
19 other state licensing agencies as necessary and appropriate in the
20 discharge of the department's duties and only under circumstances
21 to ensure against unauthorized access to such information. Any
22 person making such a report to the registry except those
23 self-reporting shall be completely immune from criminal or civil
24 liability of any nature, whether direct or derivative, for filing a
25 report or for disclosure of documents, records, or other
26 information to the registry. Violation of this section is a Class
27 I misdemeanor.

28 Sec. 8. Section 71-448, Revised Statutes Supplement,

1 2004, is amended to read:

2 71-448. The department may take disciplinary action
3 against a license issued under the Health Care Facility Licensure
4 Act on any of the following grounds:

5 (1) Violation of any of the provisions of the
6 Assisted-Living Facility Act, the Health Care Facility Licensure
7 Act, the Nebraska Nursing Home Act, or the rules and regulations
8 adopted and promulgated under such acts;

9 (2) Committing or permitting, aiding, or abetting the
10 commission of any unlawful act;

11 (3) Conduct or practices detrimental to the health or
12 safety of a person residing in, served by, or employed at the
13 health care facility or health care service;

14 (4) A report from an accreditation body or public agency
15 sanctioning, modifying, terminating, or withdrawing the
16 accreditation or certification of the health care facility or
17 health care service;

18 (5) Failure to allow an agent or employee of the
19 Department of Health and Human Services, the Department of Health
20 and Human Services Finance and Support, or the Department of Health
21 and Human Services Regulation and Licensure access to the health
22 care facility or health care service for the purposes of
23 inspection, investigation, or other information collection
24 activities necessary to carry out the duties of such departments;

25 (6) Discrimination or retaliation against a person
26 residing in, served by, or employed at the health care facility or
27 health care service who has submitted a complaint or information to
28 the Department of Health and Human Services, the Department of

1 Health and Human Services Finance and Support, or the Department of
2 Health and Human Services Regulation and Licensure;

3 (7) Discrimination or retaliation against a person
4 residing in, served by, or employed at the health care facility or
5 health care service who has presented a grievance or information to
6 the office of the state long-term care ombudsman;

7 (8) Failure to allow a state long-term care ombudsman or
8 an ombudsman advocate access to the health care facility or health
9 care service for the purposes of investigation necessary to carry
10 out the duties of the office of the state long-term care ombudsman
11 as specified in the rules and regulations adopted and promulgated
12 by the Department of Health and Human Services;

13 (9) Violation of the Emergency Box Drug Act;

14 (10) Failure to file a report required by section
15 71-168.02;

16 (11) Violation of the Medication Aide Act; ~~or~~

17 (12) Failure to file a report of suspected abuse or
18 neglect as required by sections 28-372 and 28-711; or

19 (13) Failure to comply with section 4 of this act or
20 failure to file a report required by section 5 of this act.

21 Sec. 9. Section 71-6038, Revised Statutes Supplement,
22 2004, is amended to read:

23 71-6038. For purposes of sections 71-6038 to 71-6042:

24 (1) Complicated feeding problems include, but are not
25 limited to, difficulty swallowing, recurrent lung aspirations, and
26 tube or parenteral or intravenous feedings;

27 (2) Department means the Department of Health and Human
28 Services Regulation and Licensure;

1 (3) Nursing assistant means any person employed by a
2 nursing home for the purpose of aiding a licensed registered or
3 practical nurse through the performance of nonspecialized tasks
4 related to the personal care and comfort of residents other than a
5 paid dining assistant or a licensed registered or practical nurse;

6 ~~(4)~~ Nursing home means any facility or a distinct part of
7 any facility that provides care as defined in sections 71-420,
8 71-421, 71-422, 71-424, and 71-429; and

9 ~~(5)~~ (4) Paid dining assistant means any person employed
10 by a nursing home for the purpose of aiding a licensed registered
11 or practical nurse through the feeding of residents other than a
12 nursing assistant or a licensed registered or practical nurse.

13 Sec. 10. Section 71-6603, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 71-6603. On and after September 6, 1991, ~~no~~ No person
16 shall act as a home health aide unless such person:

17 (1) Is at least eighteen years of age;

18 (2) Is of good moral character;

19 (3) ~~Has not been convicted of a crime under the laws of~~
20 ~~this state or another jurisdiction, the penalty for which is~~
21 ~~imprisonment for a period of more than one year and which is~~
22 ~~rationally related to the person's fitness or capacity to act as a~~
23 ~~home health aide;~~

24 ~~(4)~~ Is able to speak and understand the English language
25 or the language of the home health agency patient and the home
26 health agency staff member who acts as the home health aide's
27 supervisor;

28 ~~(5) Meets one of the following qualifications:~~

1 ~~(a) Has successfully completed a home health aide~~
2 ~~training course which meets the standards described in section~~
3 ~~71-6608.01,~~

4 ~~(b) Is a graduate of a school of nursing,~~

5 ~~(c) Has been employed by a licensed home health agency as~~
6 ~~a home health aide II prior to September 6, 1991,~~

7 ~~(d) Has successfully completed a course in a school of~~
8 ~~nursing which included practical clinical experience in fundamental~~
9 ~~nursing skills and has completed a competency evaluation as~~
10 ~~described in section 71-6608.02,~~

11 ~~(e) Has successfully completed a basic course of training~~
12 ~~approved by the department for nursing assistants as required by~~
13 ~~section 71-6039 and has completed a competency evaluation as~~
14 ~~described in section 71-6608.02,~~

15 ~~(f) Has been employed by a licensed home health agency as~~
16 ~~a home health aide I prior to September 6, 1991, and has completed~~
17 ~~a competency evaluation as described in section 71-6608.02, or~~

18 ~~(g) Has met the qualifications equal to one of those~~
19 ~~contained in subdivisions (a) through (f) of this subdivision in~~
20 ~~another state or territory of the United States~~

21 (4) Is listed on the Nurse Aide Registry as having active
22 status; and

23 ~~(6)~~ (5) Has provided to the employing licensed home
24 health agency proof of meeting the requirements of this section.

25 Sec. 11. Section 71-6725, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 71-6725. (1) The minimum competencies for a medication
28 aide, a person licensed to operate a child care facility or a staff

1 member of a child care facility, or a staff member of a school
2 shall include (a) maintaining confidentiality, (b) complying with a
3 recipient's right to refuse to take medication, (c) maintaining
4 hygiene and current accepted standards for infection control, (d)
5 documenting accurately and completely, (e) providing medications
6 according to the five rights, (f) having the ability to understand
7 and follow instructions, (g) practicing safety in application of
8 medication procedures, (h) complying with limitations and
9 conditions under which a medication aide may provide medications,
10 and (i) having an awareness of abuse and neglect reporting
11 requirements and any other areas as shall be determined by rules or
12 regulations.

13 (2) The Department of Health and Human Services
14 Regulation and Licensure shall adopt and promulgate rules and
15 regulations setting minimum standards for competencies listed in
16 subsection (1) of this section and methods for competency
17 assessment of medication aides. The Department of Health and Human
18 Services shall adopt and promulgate rules and regulations setting
19 methods for competency assessment of the person licensed to operate
20 a child care facility or staff of child care facilities. The State
21 Department of Education shall adopt and promulgate rules and
22 regulations setting methods for competency assessment of the school
23 staff member.

24 (3) A medication aide ~~(except one who is not employed by~~
25 ~~a nursing home, an intermediate care facility for the mentally~~
26 ~~retarded, or an assisted-living facility)~~ health care facility or
27 health care service as defined in the Health Care Facility
28 Licensure Act, a person licensed to operate a child care facility

1 or a staff member of a child care facility, or a staff member of a
2 school shall not be required to take a course. The medication aide
3 shall be assessed to determine that the medication aide has the
4 competencies listed in subsection (1) of this section.

5 (4) A medication aide providing services in an
6 ~~assisted-living facility as defined in section 71-406, a nursing~~
7 ~~home, or an intermediate care facility for the mentally retarded~~
8 for a health care facility or health care service as defined in the
9 Health Care Facility Licensure Act shall be required to have
10 completed a forty-hour course on the competencies listed in
11 subsection (1) of this section and competency standards established
12 through rules and regulations as provided for in subsection (2) of
13 this section, except that a medication aide who has, prior to
14 January 1, 2003, completed a twenty-hour course and passed an
15 examination developed and administered by the Department of Health
16 and Human Services Regulation and Licensure may complete a second
17 twenty-hour course supplemental to the first twenty-hour course in
18 lieu of completing the forty-hour course. The department shall
19 adopt and promulgate rules and regulations regarding the procedures
20 and criteria for curriculum. Competency assessment shall include
21 passing an examination developed and administered by the
22 department. Criteria for establishing a passing standard for the
23 examination shall be established in rules and regulations.

24 (5) Medication aides providing services ~~in nursing homes~~
25 ~~or intermediate care facilities for the mentally retarded~~ for a
26 health care facility or health care service as defined in the
27 Health Care Facility Licensure Act shall also meet the requirements
28 set forth in section ~~71-6039~~ 2 of this act.

LB 387

LB 387

1 Sec. 12. Original sections 71-6603 and 71-6725, Reissue
2 Revised Statutes of Nebraska, and sections 71-448, 71-6038, and
3 71-6039, Revised Statutes Supplement, 2004, are repealed.